IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

NOTICE OF MOTION NO.2979 OF 2006
WITH
NOTICE OF MOTION NO.4417 OF 2006
WITH
APPEAL NO.892 OF 2006
IN
WRIT PETITION NO.838 OF 2006

Mr.Santosh S. Salkar & Ors. ...Appellants.
Vs.
M/s.United White Metal Limited. ...Respondent.

....

Shri V. P. Vaidya with Shri M. S. Topkar for the Appellants.
Shri K.K. Singhvi, Senior Advocate i/b. Shri Avinash Jalisatgi for Respondent No.1.
Shri M.D. Nagale for Respondent No.2.

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CORAM : R. M. S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ.

March 5, 2007.

P.C.

Heard. The appellants are seeking to challenge the order dated 3rd April 2006 by filing the appeal against the same. Undisputedly the appellants had filed an appeal being Appeal No.419 of 2006 which came to be dismissed on 28th July 2006 on the ground that the appellants were not parties before the Learned Single Judge or in the proceedings before the lower Courts and,

therefore, cannot file the appeal without necessary leave of the Court. The appellants by the present Notices of Motion have sought to seek leave while seeking condonation of delay in filing the appeal.

2. Undisputedly the delay is of 118 days in filing the appeal. As already observed above, the appellants were aware that the impugned order was passed on 3rd April 2006. It is their own contention that they had already filed Appeal No.419 of 2006 which came to be dismissed on 28th July 2006 for want of leave of the Court. All these facts are to the knowledge of the appellants. In the affidavit in support of the Notice of Motion for condonation of delay, there is absolutely not a single word for explaining the delay from 28th July 2006 till 13th December 2006, the day on which the Notice of Motion for condonation of delay was filed and further till 15th December 2006, the day on which their Notice of Motion seeking leave for filing appeal was taken up. In the absence of explanation for the said period, apparently no cause is shown for the condonation of delay, leave aside sufficient cause.

3. Considering the above facts, the impugned order which clearly discloses the view taken by the Supreme Court in **Vazir Glass Works Ltd. V. Maharashtra General Kamgar Union and another**, 1996(72) FLR 335having been followed and therefore there is no case for interference even on merits.. Undoubtedly, the learned Advocate for the appellants sought to distinguish the said decision by referring to various provisions of the Industrial Disputes Act, 1947. However, it is to be noted that no such point was sought to be raised before the Learned Single Judge. In any case, since no sufficient cause for condonation of delay has been shown, the question of grant of leave to file appeal or to condone the delay does not arise. Hence, both the Notices of Motion are rejected and stand discharged. Consequently, Appeal No.892 of 2006 also stands rejected.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)